

I work for the First National Bank of Bastrop, a \$250 million locally owned, community bank in Central Texas. We have been in business in our community since 1889.

The Federal Reserve in late November published for comment proposals to significantly modify the consumer protection regulations' requirements on the form of required disclosures. I hope that the staff and governors understand that this proposal is very far reaching and cannot be fixed. It will require every bank to review each document to see whether there is a required disclosure, revise it -- at great effort because of the subjective nature of the standard -- and then make the form changes, program changes, website changes, and telephone script changes. It will be a huge endeavor and huge expense.

And even then, we will not be safe. Plaintiff's attorneys can use the regulations to challenge any disclosure. Our concern is for the potential of both class action lawsuits as well as the collection efforts.

Not only that, it will not be helpful to consumers. First, the proposals recommend segregating all disclosures. This won't make sense in a lot of integrated documents where other disclosures or other information are logically together to help consumer understand terms, compare products, etc. Plus the disclosures will be much longer, intimidating consumers so that they are less likely to read them at all.

Specifically at issue:

Requirements are unclear and will invite expensive lawsuits. Terms such as "everyday words" "legal terminology," "explanations that are imprecise" and even "wide margins" are unclear, especially with regard to complicated disclosures typical of Regulation Z. Also, it is not clear how institutions should apply the examples to different types of disclosures, such as ATM receipts. While the proposal says that the examples are "optional," courts cannot be expected to agree. Plus, even if the bank wins a lawsuit, it still pays the cost of defending itself. The potential for lawsuits lies not just with class action suits, but also debt collection suits. The subjectivity of the proposal will invite lawsuits as well as second-guessing by examiners.

The proposals will impose an expensive regulatory burden. Under the proposal, banks will have to review every disclosure required under

Regulations B (ECOA), E (EFTA), M (Consumer Leasing), Z (TILA), and DD (TISA) and determine whether bullet points should be added, margins widened, line spacing adjusted. They will have to also be examined for “understandability,” that is whether they are too legal sounding and lack “everyday words,” a very subjective standard. Banks will then bear the cost of redrafting and reproducing many if not all of disclosures. It is probable that some adjustment will have to be made to each required disclosure. The requirements related to font size, margin size, headings, and bullets will drastically increase the length of the disclosures, adding new costs. And not only will forms be affected. Software systems, websites, telephone scripts, will all have to be changed.

The revised disclosures may be less helpful to consumers. Because the requirements will lengthen the disclosures, in some cases, by pages, consumers will be less inclined to review them. In addition, many banks include additional information that is useful to consumers, especially on the back of checking account and credit card account statements. Institutions will have to omit this useful information or pay for the additional paper. Some related required disclosures may end up segregated, which will confuse or misdirect consumers.

The regulations affected by the proposal are different from Regulation P and are not suited to this approach. Regulation P requires generic disclosures that are not specific to any particular transaction or disclosure. A single disclosure, once completed, typically applies to all of the institution’s account, so compliance is much simpler. Applying the same standard to the plethora of various disclosures in the other regulations presents a very different project. In addition, unlike the other consumer protection regulations, there is no civil liability for violations of Regulation P, meaning Regulation P doesn’t invite lawsuits for good faith compliance.

The Board has not identified a problem with existing regulations and disclosures to justify the compliance burden and potential liability. The Board explains its purpose is twofold: facilitate compliance and ensure consumers understand the disclosures. While generally, banks appreciate consistency among regulations to make compliance easier, it is not justified or workable in this case. Addressing the second purpose, the Board has not made a case. It has not offered any examples or explanations of where the disclosures are confusing or unclear. If they exist, the Board should identify them and address them specifically.

The proposed changes, if adopted, will have a significant adverse and costly effect on community banks; the proposals will impose a huge compliance burden on community banks, promote lawsuits and potential liability for good faith compliance, and lengthen disclosures.

Not only that, it will be of absolutely no benefit to consumers.

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